

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

CHARLES EDWARD JOHNSON,  
 Plaintiff(s),  
 v.  
 KILOLO KIJAKAZI,  
 Defendant(s).

Case No. 2:21-cv-01036-NJK

**ORDER**

[Docket No. 21]

This case involves judicial review of administrative action by the Commissioner of Social Security (“Commissioner”) denying Plaintiff’s application for disability insurance benefits pursuant to Title XVI of the Social Security Act.

Currently before the Court is Plaintiff’s Motion for Remand. Docket No. 21.<sup>1</sup> One of the issues raised is whether remand is required in light of constitutional concerns regarding the tenure of former Commissioner Andrew Saul. The motion has not directly addressed the question of Plaintiff’s standing to raise this argument, which is a jurisdictional issue that the Court has a duty to examine. *E.g., United States v. Hays*, 515 U.S. 737, 742 (1995). Moreover, it appears that there is a split of authority on standing in the context of the separation-of-powers argument now being presented. *See, e.g., Tristan M. v. Kijakazi*, 2021 WL 4993086, at \*2 (D. Minn. Oct. 27, 2021) (collecting cases on split of authority).

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<sup>1</sup> The parties consented to resolution of this matter by the undersigned magistrate judge. *See* Docket No. 3; *see also Gen. Order* 2019-08.

1 Accordingly, Plaintiff's motion is **DENIED** without prejudice. Any renewed motion  
2 raising this constitutional argument must provide meaningful discussion as to Plaintiff's standing.<sup>2</sup>  
3 The renewed motion must be filed by November 16, 2021.

4 IT IS SO ORDERED.

5 Dated: November 2, 2021

  
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7 Nancy J. Koppe  
United States Magistrate Judge  
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27 <sup>2</sup> This is a rapidly evolving area of the law. The Court expects counsel to thoroughly  
28 research the positions advanced and to cite supportive case law whenever possible, even if that  
case law is out-of-circuit, unpublished, and/or at the district court level.